



Appeal to the Board of Supervisors or Planning Commission (County or Montecito)

APPEAL TO THE BOARD OF SUPERVISORS OR PLANNING COMMISSION (APL) on the issuance, revocation, or modification of:

- All Discretionary projects heard by one of the Planning Commissions
- Board of Architectural Review decisions
- Coastal Development Permit decisions
- Land Use Permit decisions
- Planning & Development Director's decisions
- Zoning Administrator's decisions

THIS PACKAGE CONTAINS

✓ APPLICATION FORM

✓ SUBMITTAL REQUIREMENTS

AND, IF ✓'D, ALSO CONTAINS

South County Office 123 E. Anapamu Street Santa Barbara, CA 93101 Phone: (805) 568-2000 Fax: (805) 568-2030	North County Office 624 W. Foster Road, Suite C Santa Maria, CA 93455 Phone: (805) 934-6250 Fax: (805) 934-6258	Clerk of the Board 105 E. Anapamu Street Santa Barbara, CA 93101 Phone: (805) 568-2240 Fax: (805) 568-2249
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SUBMITTAL REQUIREMENTS

- _____ 8 Copies of the attached application.
- _____ 8 Copies of a written explanation of the appeal including:
- If you are not the applicant, an explanation of how you are an “**aggrieved party**” (“Any person who in person, or through a representative, appeared at a public hearing in connection with the decision or action appealed, or who, by the other nature of his concerns or who for good cause was unable to do either.”);
 - A clear, complete and concise statement of the **reasons or grounds for appeal**:
 - Why the decision or determination is consistent with the provisions and purposes of the County’s Zoning Ordinances or other applicable law; or
 - There was error or abuse of discretion;
 - The decision is not supported by the evidence presented for consideration;
 - There was a lack of a fair and impartial hearing; or
 - There is significant new evidence relevant to the decision which could not have been presented at the time the decision was made.
- x 1 Check payable to County of Santa Barbara.

Note: There are additional requirements for certain appeals including:

- a. Appeals regarding a previously approved discretionary permit** – If the approval of a Land use permit required by a previously approved discretionary permit is appealed, the applicant shall identify: 1) How the Land Use Permit is inconsistent with the previously approved discretionary permit; 2) How the discretionary permit’s conditions of approval that are required to be completed prior to the approval of a Land Use Permit have not been completed; 3) How the approval is inconsistent with Section 35.106 (Noticing).
- b. Appeals regarding Residential Second Units (RSUs)** – The grounds for an appeal of the approval of a Land Use Permit for a RSU in compliance with Section 35.42.230 (Residential Second Units) shall be limited to whether the approved project is in compliance with development standards for RSUs provided in Section 35.42.230.F (Development Standards).



**PLANNING & DEVELOPMENT
APPEAL FORM**

SITE ADDRESS: 6794 Trigo Road

ASSESSOR PARCEL NUMBER: 075-141-003

Are there previous permits/applications? no yes numbers: _____
(include permit# & lot # if tract)

Is this appeal (potentially) related to cannabis activities? no yes

Are there previous environmental (CEQA) documents? no yes numbers: _____

1. **Appellant:** _____ Phone: _____ FAX: _____

Mailing Address: _____ E-mail: _____
Street City State Zip

2. **Owner:** David W. Gerrity Phone: 805-708-8487 FAX: _____

Mailing Address: PO Box 1107 Summerland, CA 93067 E-mail: DWGrentals@gmail.com
Street City State Zip

3. **Agent:** _____ Phone: _____ FAX: _____

Mailing Address: _____ E-mail: _____
Street City State Zip

4. **Attorney:** _____ Phone: _____ FAX: _____

Mailing Address: _____ E-mail _____
Street City State Zip

COUNTY USE ONLY

Case Number: _____	Companion Case Number: _____
Supervisorial District: _____	Submittal Date: _____
Applicable Zoning Ordinance: _____	Receipt Number: _____
Project Planner: _____	Accepted for Processing _____
Zoning Designation: _____	Comp. Plan Designation _____

COUNTY OF SANTA BARBARA APPEAL TO THE:

BOARD OF SUPERVISORS

PLANNING COMMISSION: COUNTY MONTECITO

RE: Project Title Gerrity Garage Conversion

Case No. 22CDP-00000-00009

Date of Action 06/02/2022

I hereby appeal the approval approval w/conditions denial of the:

Board of Architectural Review – Which Board? _____

Coastal Development Permit decision

Land Use Permit decision

Planning Commission decision – Which Commission? Santa Barbara County

Planning & Development Director decision

Zoning Administrator decision

Is the appellant the applicant or an aggrieved party?

Applicant

Aggrieved party – if you are not the applicant, provide an explanation of how you are and “aggrieved party” as defined on page two of this appeal form:

Reason of grounds for the appeal – Write the reason for the appeal below or submit 8 copies of your appeal letter that addresses the appeal requirements listed on page two of this appeal form:

- A clear, complete and concise statement of the reasons why the decision or determination is inconsistent with the provisions and purposes of the County’s Zoning Ordinances or other applicable law; and
- Grounds shall be specifically stated if it is claimed that there was error or abuse of discretion, or lack of a fair and impartial hearing, or that the decision is not supported by the evidence presented for consideration, or that there is significant new evidence relevant to the decision which could not have been presented at the time the decision was made.

Parking Standards

Specific conditions imposed which I wish to appeal are (if applicable):

- a. The new parking standard code
- b.
- c.
- d.

Please include any other information you feel is relevant to this application.

CERTIFICATION OF ACCURACY AND COMPLETENESS Signatures must be completed for each line. If one or more of the parties are the same, please re-sign the applicable line.

Applicant's signature authorizes County staff to enter the property described above for the purposes of inspection.


I hereby declare under penalty of perjury that the information contained in this application and all attached materials are correct, true and complete. I acknowledge and agree that the County of Santa Barbara is relying on the accuracy of this information and my representations in order to process this application and that any permits issued by the County may be rescinded if it is determined that the information and materials submitted are not true and correct. I further acknowledge that I may be liable for any costs associated with rescission of such permits.

Print name and sign – Firm Date

Print name and sign – Preparer of this form Date

Print name and sign – Applicant Date

Print name and sign – Agent Date

David Gerrity  01/16/2023

Print name and sign – Landowner Date

APPEAL TO BOARD OF SUPERVISORS
6794 TRIGO/6793 PASADO RD. ISLA VISTA
CASE: #22CDP-00000-00009

Dear Board of Supervisors,

"Short of that, what can be done to make life more bikeable in this city built by the car-loving Robert Moses under the guiding principle that "cities are created by and for traffic"? Other cities, particularly in Europe, have found ways of tackling the matter. Paris has committed to banning most cars from its city center by 2024. "

Patricia Marx, The New Yorker 12/26/22

State Law AB-2097 bans parking requirements
ADU Laws convert garages to housing

Please don't make me go to court over this. I am humbly asking.

This permit is not a big deal. It is to use garage as dining room; the existing parking spot to be re located on site. This permit does NOT impact parking.

I knew before I applied, staff would deny the permit and I would be here in front of you.

It is clear the state has mandated additional housing, stated there is a housing crisis, and it is not a municipal affair. There has been a significant shift in Public policy and legal policy with it.

The approval of this permit will not set a precedent for other properties.

Parking:

My uncovered parking blocks the use of the garage.

Using the garage for parking would actually reduce the amount of off street parking available.

Other properties don't have 2 legal parking spaces available, outside the setbacks.

There are not going to be other properties with this parking configuration; other properties will not qualify to convert the garage.

Isla Vista needs more housing, not more cars.

It's the right thing:

I do not let the residents use the garage. I'm sure you can imagine why.

I have the garage vacant - while our community is bursting out in need of housing.

I want the community to be able to use it. I need this permit to give the community back the housing space it needs.

Description:

Currently, there are 2 legal uncovered parking spaces on site.

The garage is not accessible for parking.

The owner uses one of the garages for storage.

The owner converted the dining area in the house to bathrooms and laundry in 2004.

The proposed permit will replace the lost dining room area converted in 2004.

The Planning Commission and one public comment were concerned with street parking. This permit does not change parking on site or increase parking on the street. This permit does not impact existing parking. It only moves parking on site.

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In order to have a court considered any issues, I must first have raised them in the appeal process. The following issues are hereby stated so they may be heard by a court.

Case #1

Edmonds v. County of Los Angeles

Dienelt v. County of Monterey

"The ultimate purpose of zoning is to confine certain classes of buildings and uses to particular localities and to reduce all nonconforming uses within the zone to conformity as speedily as is consistent with proper safeguards for the interests of those affected. Any change in the premises which tends to give permanency to, or expands the nonconforming use would not be consistent with this purpose." (Dienelt v. County of Monterey)

Applicants Response:

The State has passed many laws regarding housing and stripped local jurisdiction of zoning control. State law supersedes local law.

As stated above, the purpose of non-conforming, is REMOVAL.

The section 35-106 of Article II does not conform to the state housing mandates and local general plan.

Section 35-106 of Article II REQUIRES the removal of (bedroom) housing to make the existing housing conform to that section.

The subject property would need to be reduced from a 3 bedroom to a one bedroom.

The subject property is common as to size and density in the zone district.

The majority of existing built properties in Isla Vista to conform to Section 35-106 of Article II would need to reduce their densities by over 50%.

The law REQUIRES that that 2/3 of the housing should be removed from Isla Vista.

The housing is already built and should not be required to be removed in order to conform. Section 35-106 of Article II REQUIRES the removal of existing housing as no additional parking can fit as per the code. Down zoning Isla Vista in the way it is written is not legal.

Enforcement of Section 35-106 of article II does not comply with current state and local housing mandates and the general plan.

Case #2

Miller v. Board of Public Works

"The constitutionality of the principle of zoning is no longer an open question, and a restrictive regulation in this field pursuant to a municipality's comprehensive and systematic plan of community development, when reasonable in object and not arbitrary in operation, will be sustained as within the legitimate exercise of the police power."

Applicants Response:

The position of the applicant is that the parking code, as enforced, violates the law:

"When reasonable in object and not arbitrary in operation"

The parking code, as enforced, makes the ENTIRE ZONE DISTRICT non-conforming,

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essentially making the majority of the existing housing illegal and requiring removal of bedrooms from Isla Vista. It is completely unreasonable to be requiring the removal of bedroom housing in Isla Vista. There is no way that is reasonable and therefore it is illegal. It is not reasonable to make the entire zone in Isla Vista non-conforming and require the removal of most of the housing in Isla Vista.

Additionally the reduction of densities does not comply with current state and local housing mandates and the general plan.

Case #3

Clemons v. City of Los Angeles

The courts may differ with the zoning authorities as to the 'necessity or propriety of an enactment,' but so long as it remains a 'question upon which reasonable minds might differ,' there will be no judicial interference with the municipality's determination of policy."

APPLICANT RESPONSE:

No reasonable mind could agree that the existing bedrooms in Isla Vista should be removed to be compatible with "section 35-106 of article 2"

It is not legal or reasonable to be removing bedrooms at this time. Removing housing is the only way to bring the buildings in the zone into compliance. Not only is it contrary to state housing mandates, the county general plan, it is also in violation of the California Environmental Quality Act (CEQA). For instance, the amount of demotion and land fill needed to tear down the bedrooms would violate CEQA.

This argument could be expanded but it is general knowledge, that there may be an anti-growth movement still in existence, there is no political movement to actually REMOVE existing housing already in place, except for "section 35-106 of article 2"

In determining whether a nonconforming use is the same before as after the application of a zoning ordinance "each case must stand on its own facts."

Case # 4

Wilkins v. City of San Bernardino

"An examination of the California decisions discloses that the case in which zoning ordinances have been held invalid and unreasonable as applied to particular property fall roughly into four categories: 1 Where the zoning ordinance attempts to exclude and prohibit existing and established uses or businesses that are not nuisances. (Jones v. City of Los Angeles, 211 Cal. 304 [295 P. 14]; see Biscay v. City of Burlingame, 127 Cal. App. 213 [15 P.2d 784].

Applicants Response:

"... the zoning ordinance attempts to exclude and prohibit existing and established uses or businesses that are not nuisances."

In this instance, the housing is not a nuisance. The section may not prohibit the existing bedrooms as the bedrooms are not nuisances.

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The entire neighborhood is zoned student residential. The zoning code does not try to change the use. It's clear the parking code, as enforced, requiring 12 parking spaces, "prohibits existing and established business that are not nuisances".

The existing housing (with two parking spaces per unit) are not nuisances.

Section 35-106 of Article II as being used by The Planning Department requires the removal of existing bedrooms. The purpose of non-conforming zoning is to remove the non-conforming uses from the zone as quickly as possible.

The purpose of Section 35-106 of Article II was to prevent growth and limit additional housing from being built. It is common knowledge that parking requirements are used to limit housing. It is illegal under Wilkins v. City of San Bernardino.

In Isla Vista, it is physically impossible to create more parking, as per the regulation. Therefore the only way to conform to Section 35-106 of Article II is the removal of existing bedrooms. As the bedrooms are an existing and established business that are not a nuisance, the parking regulations Section 35-106 of Article II are invalid and unreasonable as applied and are illegal. The purpose of Section 35-106 of Article II was to prevent and restrict additional housing from being built. It "prohibits existing and established business that are not nuisances" and therefore is illegal.

Case #5

Flahive v. City of Dana Point

ILLEGAL GARAGE CONVERSIONS ARE A PUBLIC NUISANCE (NOT CHANGE OF USE).

In: Flahive v. City of Dana Point. Without obtaining permits the Property Owner converted a garage into two apartments which was a violation of the city zoning ordinance. The court found this constituted a public nuisance. Not a change of USE.

That relates to this case in that garage conversions to residential USE are not a change of USE as both uses are residential.

Case#6

Hansen Bros. Enters. V. Board of Supervisors

Municipalities may only adopt reasonable measures to achieve uniformity.

Isla Vista already has uniformity based on the prior original zoning code that required two parking space per unit. Most of the zone district is developed using the prior code. Requiring additional parking is not a reasonable measure to achieve uniformity. It is an attempt to limit future growth, building and housing. Therefore Section 35-106 of Article II is not legal.

Denial does not comply with current state and local housing mandates and general plans.

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INTENTION TO USE ENTIRETY

Hansen Bros. Enters. V. Board of Supervisors

The court put forward the test:

“Prior to the time of zoning change the owner has an objective intent to use the entirety of the property...”

Applicants Response

This is a mining case, where the mining company wanted to use all the dirt.

But it's fundamental case law that applies universally to property rights.

Just like a mining company wants the dirt, a homeowner wants the grass lawn, the use of the garage, and all the other expectations that come with home ownership.

The current residents are complaining that they cannot use the garage for storage.

Mr. Gerrity does not allow the residents any access to the garages but is instead storing a small number of things in a garage.

The Planning Department Counter Staff have said the garages may be used for other purposes as long as no physical changes are made.

When Mr Gerrity purchased the property, one of the garages was used as a workshop.

When people buy (or rent) a house they expect to use it in its entirety. Owners might use a bedroom as a home office or a garage to store surf boards or a lawn mower. It is all still residential use and in community with their neighbors in the same zone.

Case #7

In: McCaslin v. City of Monterey Park

The court stated the nature of the use of the business contemplates the continuance of such use of the entire... without limitation or restriction to the immediate area...

Applicants Response

In regards to a garage space - residents use the space however they want, (as long as it is residential). It is common for people to store things in garages. It is now legal to convert a garage into an apartment with state ADU laws. People know this when buying a house with a garage. So the underlying law is the same.

Denial does not comply with current state and local housing mandates and general plans.

Case #8

VESTED RIGHT to expand

In: Halaco Engineering Co v. South Central Coast Regional Com.

The court allowed a settling pond to be expanded by a scrap recycling business as a VESTED RIGHT.

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Applicants response:

In comparing the Halaco court decision to the Gerrity garage permit the takeaway is the “VESTED RIGHT” of the business to continue and EXPAND. Mr Gerrity also has that same VESTED RIGHT to use the garage as a dining room, even if it is considered an EXPANSION.

Case # 9

EXPANDING NONCONFORMING USE

Goat Hill Tavern v. City of Costa Mesa

(fundamental vested business rights to expand nonconforming use)

In this case the tavern owner expanded his nonconforming business by adding a game room without permits.

The judge ruled “the owner had a fundamental vested right to continue operating his established business.”

Applicants Response:

The tavern case (adding a game room) is similar to converting a garage.

Certainly, the owner of rental property, in a community of rental properties, all of which are substantially similar in zoning conformance, has the same right of expansion. Regarding the application, converting the garage is no greater an expansion than the tavern game room.

Additionally, right now, there is a housing crisis as stated in state law, housing is not a municipal affair.

The prior dining area was converted to a bathroom and laundry by Mr Gerrity 18 years ago. The Mr Gerrity now wants to replace a dining room, using a garage as a dining room, when a prior dining area has been permitted for bathroom and laundry, the continued gradual maintenance in providing housing is a priority.

Case#10

SAME GENERAL CHARACTER

In: Harrington v. City of Davis

Conversion of residence to professional office the court approved as the “proposed use of the same general character as other permitted uses in the area.”

The garage in question, becoming a dining room, and relocating the parking spot outside would also be a “proposed use of the same general character as the other permitted uses.” The existing duplex would, before and after, be of the same general character as it was before and in keeping with the neighbors and the zoning.

A Change of use is: “Material Change” and abandonment of prior use required.

The residence - having a dining room vs. a garage is NOT a material change. It is still a residence. Hence there is no change of use.

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There has not been a change in residence. It still has the same number of bedrooms and same requirements as existing neighbors. (courts will allow changes within the same use category) Government Code Section 65800. Therefore NO additional parking required.

Case #11

RIGHT OF EXPANSION subject to 3 part test

Endara v. Culver City

In Endara v Culver City the court found Unless changes, additions are (1) dissimilar, (2) enlarging, or (3) more permanent they will be allowed.

Dissimilar

A dinning room is not dissimilar in a residential zone. Dinning rooms are common and allowed per current code. The use is the same, in that people living in the residence will still use the area, the area is still residential use, zoned student residential and the building meets that code.

Enlarging

The building footprint is the same so the use of the garage as a dining room is not enlarging. The space is always being used. Whether it is used as a garage or a dining room.

More Permanent

There is no change to the building structure so it is not more permanent.

Case #12

Eskeland v. City of Del Mar

As long as the requirements of the variance were met, the municipal code making the expansion of nonconforming structure unlawfully to expand were struck down by the court.

This is very similar in that: The State has passed multiple ACCESSORY DWELLING UNIT laws. The court is going to look at those laws and see that the dining room fits within the state ADU laws, similar but of greater standing, and will approve the dining room permit.

Here is an email from Veronica King:

Hi David,

As discussed in my feedback letter, the current project does not meet Article II parking standards and therefore cannot be approved as proposed. One potential solution is to convert both one-car garages into ADU's, which would only require replacement parking for the two parking spaces lost through the conversion. Bring the project into compliance with Article II standards will allow me to approve the project. If you would like to move forward with the existing plans, the application will be denied. With a denial, you may appeal and have the Planning Commission review your plans as proposed. Any appeal of our decision to deny the permit would be the Planning Commission, not the Board of Supervisors.

Would you prefer a formal denial of your CDP application as proposed, or are you interested in working on a redesign of the project to comply with ordinance standards? I am happy to set up a call to go over this with you.

Thank you,

Veronica King

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Case #13

Paramount Rock Co v County of San Diego

In this case Paramount lost and was not able to expand. But the facts of the case are that the rock crusher they wanted was \$186,000.00 and the pre-mixing they had was \$65,000.00. The Paramount case shows that 3x existing expansion in a neighborhood that is zoned agriculture is not a reasonable expansion.

Applicants Response:

In regards to the Isla Vista duplex there is no doubt there is a limit to the degree of expansion allowed by law. The applicant agrees with this. In 2004 the dining area was changed to a bathroom and laundry. Using the garage, now as a dining room, is a very small expansion.

The applicant agrees with replacing the garage space. The applicant does not agree with adding 4 additional parking spaces. The applicant does not agree to remove two bedrooms.

Summary #1

Section 35-106 of Article II, which states, "upon the change of any use, the number of parking spaces to be provided shall be calculated according to the requirements of this Division for the new use."

"All changes of use must be predicated by a change of occupancy."

Since there is no change in occupancy, there is no change in use and Section 35-106 of Article II does not apply.

Summary #2

The removal of housing does not comply with state housing mandates, local regional housing general plan, California Environment Quality Act, and the Coastal Commission.

Summary#3

The impact of Section 35-106 of Article II was not properly evaluation regarding state housing mandates, local regional housing general plan, California Environment Quality Act, and the Coastal Commission.

Summary #4.

Non conforming expansion is allowed.

Summary#5

Housing Crisis, not a municipal affair,
ADU laws, AB-2097, proximity to UCSB, grocery stores, all essential services

Basis for appeal:

There was clear bias by commission members

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The district commissioner said the reason the applicant recorded during school break was an attempt to demonstrate more available street parking. Implying the applicant was dishonest. The chair said he was not interested in the merits of the case, only in whether the County had ANY legal defense. He clearly communicated he did not care if the county could prevail. The applicant was told he would not be able to respond due to the length of his presentation. When the applicant raised his hand to respond as legally allowed it was ignored. There was clearly bias throughout the hearing.